IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5379 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASIFKHAN ALIAS BATKO ALIAS BATAKO S/O. FARIDKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

MS HANSA B PUNANI AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 26/04/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Ahmedabad City, on 11th of January, 2005, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 11th of January, 2005 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration five crimes registered against the petitioner for the offences punishable under Sections 379, 392, 356 and 114 of the Indian Penal Code. Secondly, the detaining authority took into consideration two statements recorded by the sponsoring authority on 03rd of January and 4th of January, 2005, as verified by the detaining authority on 07th of January, 2005. The identity of the witnesses is not disclosed by the detaining authority, claiming privilege under Section 9(2) of the PASA Act.

3. All the five crimes came to be registered against the petitioner before Maninagar Police Station on 7th of March, 2004, 14th of May, 2004, 26th of September,2004, 6th of October, 2004 and on 21st of October, 2004. In first two cases, the petitioner was involved in theft and robbery of gold ornaments while in third case, the petitioner was involved in theft of Hero Honda motorcycle. In fourth case, the petitioner was involved in the theft of gold ornaments while in fifth case the petitioner was involved in theft of Hero Honda Splendor motorcycle. The detaining authority exhaustively and thoroughly considered the investigation papers in the above said five crimes and came to the conclusion that the petitioner was a habitual offender of committing offences of theft.

4. Out of two in-camera statements, the first witness referred to an incident occurred on 4th of October, 2004. At about 5.00 p.m. the witness was passing near his residence and was approached by the petitioner on one motorcycle. The petitioner stated to the witness that he intended to go outside of the town and the motorcycle was to be kept in the custody of the witness. The witness suspected that the motorcycle might be a stolen property and, therefore, he refused. Thereupon, the witness was dragged in public place and was beaten by the petitioner. On raising shouts for help by the witness, a crowd was gathered, but on noticing the

crowd being gathered, petitioner took out knife from his pocket and threatened the witness to kill. The witness frightened and thereafter the petitioner ran towards the crowd with open knife, so the crowd was dispersed. The public traffic in the area was disturbed. The area was terror stricken and public order was disrupted. The second witness referred to an incident of 17th of October, 2004. At about 3.00 p.m. the witness was present at his place of business and was approached by the petitioner with one broken gold chain. The petitioner stated to the witness to purchase the said chain and to pay Rs.4,000/- to the petitioner. The witness suspected that the said chain might be a stolen property and thereafter he refused. Thereupon, the witness was dragged in public place and was beaten by the petitioner. The witness raised shouts for help which attracted a crowd. On noticing a crowd being gathered, petitioner took out a knife and threatened the witness to kill. The witness was frightened and thereafter the petitioner abused the crowd and ran towards the crowd with open knife. So, the people started running helter skelter and public order was disturbed.

5. Relying upon the above material, the detaining authority came to the conclusion that the petitioner was engaged in anti-social and illegal activities of committing thefts and harassing innocent citizens. In view of the detaining authority, the petitioner was a dangerous person within the meaning of the PASA Act. The petitioner was headstrong, ferocious and of violent temperament. The detaining authority also concluded that the petitioner was in habit of administering threats to the innocent citizens and to beat them in executing his illegal activities. The detaining authority also concluded that the illegal activities of the petitioner were prejudicial to the maintenance of public order and were required to be prevented forthwith. After considering the remedies available against the petitioner in general law, the detaining authority reached to the subjective satisfaction that there was no other alternative except to detain the petitioner under the PASA Act. The detaining authority therefore passed the order of detention of the petitioner, as aforesaid, which is under challenge in this petition.

6. Learned Advocate Ms.Krishna Mishra for the petitioner and learned AGP Ms.Hansa B Punani for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record is also taken into consideration.

7. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of only on the issue that whether there was credible and cogent material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed.

8. To reach to the subjective satisfaction that the dangerous activities of the petitioner were prejudicial to the maintenance of public order, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. While undertaking this exercise, the detaining authority has to draw a clear line between the cases falling within the category of breach of law and order and the cases falling within the category of breach of public order.

9. Referring to the five criminal cases filed against the petitioner under the Indian Penal Code for committing theft and going through the investigation papers as placed on record, it is found that those five cases came to be filed against the detenu because he was found during investigation to have committed offences of theft. The act which is alleged in the criminal cases is offence under the Penal Statute of the country. However, merely filing cases under the Penal statute of the country, would not result in a conclusion that the activities of the petitioner were disturbing the public order. At the most, the petitioner might have committed breach of the provisions of law, for which the petitioner may be tried and punished if found guilty, but surely the act constituting the offence cannot be said to have affected the even tempo of the life of the community nor the activities revealed through the investigating papers indicate that in the activities alleged through these cases, society at large or section of the society or community or particular community was involved. Therefore, these cases may be instances of breach of law and order, but cannot be branded as activities disturbing the public order.

10. Further while referring to the in-camera statements, as recorded by the sponsoring authority and verified by the detaining authority, it must be borne in mind that while reaching to the subjective satisfaction

about the alleged activities of the petitioner, it would be necessary for the detaining authority to consider fall out, reach and impact of the activities of the petitioner and thereafter to come to the conclusion that such activities were capable of disturbing the public order. Two incidents, as narrated through in-camera statements, reveal individual disputes than to involve society at large or even disturbing the even tempo of the life of the community. The potentiality of the act alleged through in-camera statements, even from the bare reading of them, are not capable of disturbing the even tempo of life of the community or society at large or section of the society. No widespread danger or harm to the society could be inferred from the statements of the witnesses. Therefore, even after taking them on their face value, those incidents, may be instances of disturbing law and order, which can be taken care of by general law and by no stretch of reasoning, such activities can be branded to be disturbing the public order.

11. In the matter of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI vs. POLICE COMMISSIONER, SURAT and Ors. as reported in 2000 (1) GLH 393. The Division Bench of this Court after considering many decisions of the Apex Court, observed in paras 20 and 21 as under :

"20 The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and Two. Devaki vs. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly in Two. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was highlighted. It was also alleged that people were scared and had run helter-skelter. In spite of such allegations, the Supreme Court held that they were not cases of maintenance of public order and hence, no action of preventive detention was uncalled for.

21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of

detention, could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again in Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police and Others, 1995 (2) GLR 1268 (Sc), the Supreme Court considered the relevant decisions on point including the decisions in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases."

12. The present set of facts are squarely covered by the above decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki (supra) and therefore the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

13. In the result, the petition is allowed. The order passed by Commissioner of Police, Ahmedabad City, on 11th of January, 2005, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu - Asifkhan alias Batko alias Batako S/o Faridkhan Pathan is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair